IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6543 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD - Petitioner(s)

Versus

HASMUKHBHAI LAXMANBHAI PATEL & 1 - Respondent(s)

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Appearance :
MS HARSHAL PANDYA FOR MR PARESH UPADHYAY for Petitioner.
MR HIMANSHU TRIVEDI for Respondent(s) : 1,
MR JT TRIVEDI for Respondent(s) : 1,
MR LB DABHI, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 08/12/2005

ORAL JUDGMENT

1.The petitioner, namely, Gujarat Water Resources Development Corporation Limited, has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the award dated 19.08.1991 passed by the Labour Court, Ahmedabad in Reference (LCA) No. 1925 of 1988 whereby the Labour Court has held that the order passed by the present petitioner on 16.12.1987 relieving the respondent No. 1 from services is illegal, improper and against the principles of natural justice and the present petitioner was directed to reinstate the respondent in the service with back wages along with all other rights in the service within one month from the publication of the said award in the Government Gazette.

2.The petition was admitted and rule was issued on 18.09.1992. Ad-interim relief was granted in terms of para 12 (B) of the petition and the said interim relief was continued thereafter. Thereafter, several orders were passed from time to time. However, the matter could not be taken up for final hearing. Yesterday i.e. on 07.12.2005, this Court has passed an order wherein it is observed that the matter is of 1992. The Court has heard Ms. Harshal Pandya, learned advocate appearing for the petitioner. The Court could have proceeded with the matter yesterday itself. However, in the interest of justice, one more opportunity was given to the respondent as the respondent No. 1's advocate has filed leave note. The matter was, therefore, adjourned to 08.12.2005 and it was made clear that irrespective of leave note or sick note of the learned advocates appearing for the respective parties, if no one appears, the Court will proceed with the dictation of

the order. Today also, when the matter is called out, Ms. Harshal Pandya, learned advocate appearing for the petitioner is present. Mr. J.T. Trivedi, learned advocate appearing for the respondent No. 1 is also present. The Court has, therefore, taken up the matter for final hearing.

3.It is the case of the petitioner that the respondent No. 1 was engaged with the petitioner Company as an apprentice as a Wireman in accordance with the provisions of Apprentice Act, 1961. Initially, the respondent No. 1 was taken up as an apprentice for a period of one year. However, pursuant to expiry of the period of apprenticeship training, he was continued as a daily wager as Wireman for want of any instruction from the office of the Apprenticeship Advisor for extending the period of training and subsequently on account of administrative

reasons, the respondent No. 1 was discontinued as a daily wager as Wireman from the petitioner Company w.e.f. 16.12.1987. After waiting for sufficient long time for getting necessary instruction, the arrangement of appointing respondent No. 1 with the petitioner company as a daily wager was not renewed for further period since the services of respondent No. 1 were no longer required and, therefore, the services of the respondent No. 1 was discontinued from the petitioner Company as a daily wager employee on account of non-renewal of the said arrangement for further period. The respondent No. 1 has, therefore, worked as a daily wager between the period from 23.05.1987 to 16.12.1987.

4.Upon discontinuation of the respondent No. 1 as a daily wager w.e.f. 16.12.1987, the respondent No. 1 raised an industrial dispute which ultimately came to be referred before the

Labour Court and the Labour Court vide its award dated 19.08.1991 directed the petitioner company to reinstate the respondent No. 1 workman in service with full back wages.

5.It is this award which is under challenge in the present petition.

6.Ms. Harshal Pandya, learned advocate appearing for the petitioner has submitted that the award passed by the Labour Court is absolutely illegal, arbitrary, erroneous, misconceived, bad in law and deserves to be quashed and set aside on the ground that the same is passed on presumption not permitted by law and the inferences not warranted by the facts. The award suffers from vice of total non-application of mind in as much as the Labour Court failed to appreciate the contention taken by the petitioner company to the effect that initially the respondent No. 1 was engaged with

the petitioner company as an apprentice and after expiry of period of one year, the respondent No. 1 was appointed as a daily wager and even as a daily wager, he has not completed 240 days of service with the petitioner company. She has further submitted that even if it is assumed that discontinuation of the respondent No. 1 was a retrenchment, the condition precedent to the retrenchment as contemplated under the provisions of Section 25F of the said Act are not required to be followed by the petitioner company. It is an admitted position of fact that after the expiry of the period of one year training, the respondent No. 1 did not complete 240 days of continuous service with the petitioner company and in view thereof, the Labour Court should not have come to the conclusion that condition precedent to the retrenchment as contemplated under the provisions of Section 25F of the said Act were applicable. She has further submitted

that the respondent No. 1 – workman was initially engaged with the petitioner company as an apprentice for a period of one year and hence, he could not be treated to be a workman as contemplated under the provisions of Section 2 (s) of the said Act for the said period. During the period for which the respondent No. 1 was engaged with the petitioner company as an apprentice, he was paid his necessary stipend as per the provisions of the Apprentice Act as well as Rules. The period during which respondent No. 1 was engaged with the petitioner company as an apprentice, it cannot be counted for computation of one year of continuous service within the meaning of the term 'continuous service' as defined under the provisions of Section 25-B of the said Act. She has further submitted that there was no basis for the Labour Court to arrive at the conclusion that the respondent No. 1 was terminated by the petitioner company only with

a view to accommodate one regular employee. As a matter of fact, after discontinuance of respondent No. 1, another apprentice was taken by the petitioner company rather than a regular employee in the post of respondent No. 1.

7.She has further submitted that the order passed by the Labour Court requires an interference by this Court while exercising its supervisory jurisdiction since the conclusion arrived at by the Labour Court is not supported by proper and valid reasons. The observations and conclusion arrived at by the Labour Court to the effect that after the expiry of period of apprenticeship training, the respondent No. 1 should have been employed with the petitioner company is absolutely against the settled legal position as apprentice has no right of employment after the expiry of period of training. She has, therefore, submitted that the impugned award dated 19.08.1991 passed by

the Labour Court requires to be quashed and set aside.

8.In support of her submissions, she relied on the decision of the Hon'ble Supreme Court in the case of *Mukesh K. Tripathi V/s. Senior Divisional Manager, LIC and Others, (2004) 8 S.C.C. 387* wherein the Hon'ble Supreme Court has taken the view that whenever an apprentice claimed status of workman, the burden and onus of proof is on him to prove that he is a workman. The Court has further observed that in absence of any pleading or proof that either by novation of contract or by reason of the conduct of the parties, the status of the apprentice has been changed from apprentice to workman, an apprentice cannot be held to be a workman.

9.She has further relied on the decision of the Hon'ble Supreme Court in the case of *U.P. State*

Electricity Board V/s. Shiv Mohan Singh and Another, (2004) 8 S.C.C. 402 wherein the Hon'ble Supreme Court has held that an apprentice remains an apprentice trainee unless a formal order of appointment follows. In the present case, the respondent workman was only appointed as a daily wager and he has not completed 240 days and hence, there is no question of invoking the provisions contained in Section 25F of the Act.

10.Lastly, she relied on the decision of the Hon'ble Supreme Court in the case of *Dhampur Sugar Mills Limited V/s. Bhola Singh, (2005) 2 S.C.C. 470* wherein the Hon'ble Supreme Court has observed that in terms of the 1961 Act, a trainee or an apprentice has no right to be absorbed in services. It is trite that if the provisions of the Apprentices Act apply, the provisions of the labour laws would have no application. The Court has further held that

when a workman is appointed in terms of a scheme on daily wages, he does not derive any legal right to be regularized in his service. It is now well known that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularization particularly in a case when the workman had not been appointed in accordance with the extant rules. She has, therefore, submitted that the observations made by the Hon'ble Supreme Court in the judgments referred to above clearly applies to the facts of the present case as initially, the respondent No. 1 was appointed as an apprentice and after the expiry of the period of one year, he was appointed as a daily wager. Even as a daily wager, he has not completed 240 days. The Supreme Court has gone one step further and held that even completion of 240 days of continuous service in a year may not by itself be a ground for directing regularization particularly in a case when the

workman had not been appointed in accordance with the existing rules. She has, therefore, submitted that the impugned award passed by the Labour Court is required to be quashed and set aside.

11.Affidavit-in-reply is filed by the respondent No. 1 – workman wherein it is stated that the award of the Labour Court is just and is based on evidence. The Labour Court has considered all the evidence placed before it and has also made observation about the evidence led before the Labour Court in the award. It was, therefore, contended that the award of the Labour Court should not be interfered with by this Court while exercising its writ jurisdiction under Article 227 of the Constitution of India. It is further stated that the respondent No. 1 was required to be kept for 3 years for apprenticeship period. The Corporation could have extended apprenticeship

period. But the Corporation has not done so. It is also not the case of the petitioner Corporation that other three employees who were also working as apprentice were not admitted in the service by the Corporation. If according to the Corporation the apprenticeship period is for 3 years, in that case, the appointment of the respondent No. 1 – workman for one year was illegal and in that case, he has completed more than 240 days service as he has worked for about 1 and ½ years and hence, the provisions of Section 25F are required to be complied with. It is further stated that the Executive Engineer has stated in his cross-examination and admitted that the person who has been appointed in place of the concerned workman has completed apprenticeship period or not, has not been stated by the Executive Engineer and regular wireman seemed to be a junior than respondent No. 1 and hence, the respondent No. 1 who has already completed apprenticeship

successfully, should have been kept by the petitioner Corporation. As per the definition of workman as defined in Section 2(s) of the Act, even an apprentice who has been employed by the employer is a workman and, therefore, the Labour Court has ample power to decide the dispute referred to it. In that view of the matter, it cannot be said that the apprentice is not covered under Section 2(s) of the I.D. Act. Apprentice is included in the definition of workmen. Mr. J.T. Trivedi, learned advocate appearing for the respondent has submitted that the respondent is not seeking regularization. He is seeking reinstatement and hence, the decision of the Hon'ble Supreme Court in the case of Dhampur Sugar Mills Limited V/s. Bhola Singh (Supra) is not be applicable to the facts of the present case. It is, therefore, urged that the order passed by the Labour Court should be upheld and the respondent No. 1 – workman should be reinstated with full back

wages and continuity of service as directed by the Labour Court.

12.After having heard learned advocates appearing for the respective parties and after having gone through the award passed by the Labour Court as well as the pleadings of the parties as contained in the petition, affidavit-in-reply as well as rejoinder and after having considered the authorities cited before the Court, the Court is of the view that the Labour Court has committed an obvious error in law as well as on facts. It is an admitted position that the respondent No. 1 – workman was appointed as an apprentice and he has completed the period of one year as an apprentice. On completion of one year, the respondent No. 1 – workman was appointed as a daily wager. However, as a daily wager, he has not completed 240 days of continuous service and hence, the petitioner - Corporation is not required to

comply with the provisions of Section 25F of the Act. The Hon'ble Supreme Court has made it very clear in the case of *Dhampur Sugar Mills Limited V/s. Bhola Singh, (supra)* that even if the workman appointed as a daily wager has completed 240 days of continuous service, this fact by itself would not give him any right to be reinstated with full back wages and continuity of service. The Courts have also taken the view that apprentice is not a workman and hence, the respondent No. 1 – workman's services as an apprentice would not be counted for the purpose of considering him as a workman and under the Apprentice Act, no right is conferred on the apprentice to claim an employment in the organization.

13.Taking over all view of the matter, the Court is of the view that the Labour Court has arrived at an erroneous and incorrect conclusion by awarding reinstatement with full

back wages to the respondent No. 1 – workman with continuity of service. Hence, the award dated 19.08.1991 passed by the Labour Court, Ahmedabad in Reference (LCA) No. 1925 of 1988 is contrary to the settled position of law and hence, it is quashed and set aside.

14.The petition is allowed. Rule is made absolute without any order as to costs.

[K.A. PUJ, J.]

S*avariya*